

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**TETON COUNTY, WYOMING**

IN THE MATTER OF: Variance (VAR2023-0003)

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING A VARIANCE**

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THIS MATTER came before the Teton County Board of County Commissioners (hereafter “Board” or “Board of Commissioners”) for public hearing on June 6<sup>th</sup> 2023, upon the application of Robbie Morris on behalf of WYVAN VRT 2550 Moose Wilson LLC, for a Variance, pursuant to Section 8.8.2., Variances, of the Teton County Land Development Regulations (LDRs), to vary the eight feet (8’) maximum height per Section 3.3.1.B.10 for a sign for an active business off Moose Wilson Road. The Board considered a presentation from staff. The Board of Commissioners, being fully advised herein, finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. The property, 2550 Moose Wilson Road, is owned by WYVAN VRT 2550 Moose Wilson LLC, which is located at 2550 Moose Wilson Road, consisting of 2.22 acres in size. The property is zoned Business Conservation (BC), is partially within the Natural Resources Overlay (NRO) and is located off Highway 390 about 1.3 miles north of the intersection between Highway 390 and Highway 22.
2. The applicant has requested approval of a Variance Permit, VAR2023-0003, to vary Section 3.3.1.B.10 of the LDRs to allow for a 13-foot-tall sign to advertise for a new restaurant business off Moose Wilson Road.
3. This application was brought before the Teton County Planning Commission on May 8<sup>th</sup>, 2023, with a recommendation from the Planning Director for denial of VAR2023-0003.
4. On May 8<sup>th</sup>, 2023, the Planning Commission voted 0-4 (Commissioner Viehman absent) on a motion to recommend approval of VAR2023-0003, Therefore the motion failed, and the resulting recommendation was one of denial of VAR2023-0003 to the Board of Commissioners.

5. The public hearings of the Planning Commission and the Board of Commissioners were properly noticed pursuant to the Section 8.2.14.C. of the LDRs.
6. The application was brought before the Board of County Commissioners on June 6<sup>th</sup>, 2023.
7. A staff report dated June 6<sup>th</sup>, 2023, was submitted to the Board of County Commissioners for review regarding the Variance (VAR2023-0003) pursuant to Section 8.8.2., of the LDRs, to vary Section 3.3.1.B.10 of the LDRs to allow for a 13-foot-tall sign for the advertisement of a new restaurant off Moose Wilson Road.
8. As set forth in the June 6<sup>th</sup>, 2023, staff report, the recommendation from the Planning Commission and the Planning Director to the Board of County Commissioners is for denial of the Variance (VAR2023-0003).
9. The Board heard a presentation from staff and a presentation from a representative of applicant.
10. The Chair closed public comment with no public comment given, and the Board discussed the application.
11. The Board of County Commissioners reviewed the six findings for a Variance pursuant to Section 8.8.2. of the LDRs which are:
  - a. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.
  - b. The special circumstances and conditions have not resulted from any willful modification of the land or building.
  - c. The special circumstances and conditions are such that the strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded to the community.
  - d. The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant.
  - e. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed and is otherwise not detrimental to the public welfare.

f. The granting of the variance is consistent with the general purpose and intent of these LDRs.

12. On June 6<sup>th</sup>, 2023, the Board voted on the matter, which vote was 1 to 4 with Commissioner Epstein voting in the affirmative resulting in the motion failing and the Board's denial of the Variance (VAR2023-0003).

### **CONCLUSIONS OF LAW**

- I. Based on the presentation and staff report of the Planning Department, the information presented by the applicant and agent, the application from Robbie Morris for a Variance (VAR2023-0003) does not comply with all applicable provisions of the Teton County Comprehensive Plan.
- II. Based on the presentation and staff report of the Planning Department, the information presented by the applicant and agent, the application from Robbie Morris for a Variance (VAR2023-0003) does not comply with all applicable provisions of the Teton County Land Development Regulations.
- III. The Board concludes and hereby finds that the application dated February 24<sup>th</sup>, 2023, for a Variance (VAR2023-0003) does not comply with and meet all six (6) findings required pursuant to Section 8.8.2. of the LDRs to vary Section 3.3.1.B.10 for the allowance of a 13-foot-tall sign installation for a new restaurant business off Moose Wilson Road.

1. *There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.*

**Cannot be made.** This sign is in a commercial area and is within the Business Conservation (BC) zone. Sidewinders Westbank operates as a restaurant which is considered nonresidential/commercial use. This piece of land has been operating as a restaurant of some kind for over three decades and is similar in nature to its surrounding neighbors. It is located next door to another restaurant, the Calico, which also has a free-standing sign of a similar size, but their sign was approved in 1992 under the regulations in effect at that time. In order for drivers and pedestrians to read the sign easily from the road, the applicant is requesting a larger sign. The applicant has indicated that the shape of the lot, location of the building setback, and the speed of Highway 390 are all factors in requesting this modification. Staff finds that there are no special circumstances peculiar to the setting of Sidewinders Westbank that do not apply generally to the neighboring land or buildings.

2. *The special circumstances and conditions have not resulted from any willful modification of the land or building*

**Cannot be made.** There are no special circumstances or conditions on this property that support this variance request. The owner installed the sign on an existing structure without proper approval, utilizing an existing mount that was already located on the property. The sign structure was approved under previous LDRs. The expectation is that once a sign is modified it needs to be adjusted to meet the current LDR standards in the BC zone, which allows a sign of this description to be a maximum height of 8 feet.

3. *The special circumstances and conditions are such that strict application of the regulation sought to be varied would create a hardship on the applicant far greater than the protection afforded the community*

**Cannot be made.** There are no special circumstances or conditions on this property that support this variance request. Advertising the restaurant is essential for the use of the property and the business. However, the size of the sign does not impose any kind of hardship on the applicant. Historically, two other businesses were able to successfully advertise their business using a smaller sign, meeting LDR standards. Replacing the existing sign with a freestanding sign of only eight feet in height wouldn't defeat the primary purpose of the signage as it would still be visible from the roadway. Additionally, the readability of the sign could be improved with a different design that increases the font size of the letters while still meeting the requirements of the LDRs.

4. *The variance sought is the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant.*

**Cannot be made.** The variance sought is not the minimum variance necessary to provide balance between the purpose of the regulation sought to be varied and its impact on the applicant. The applicant has not revised their application to request the minimum area or height necessary to accomplish the goal of having signage that is viewable from the roadway at its current location. The proposed sign is larger than the sign that previously existed in that lot for a similar purpose. The purpose of the non-residential sign regulations is to allow businesses to attract new customers, advertise a service, or generally to draw people to that location. The Sidewinders Westbank sign, as a commercial use, can obtain the same result without this variance which has historically been proven through previously approved sign permits for the same location. The proposed sign, other than the proposed height, still provides balance with the Business Conservation regulations by meeting all other design limitations (sign area, sign materials, and display standards) of a rustic freestanding sign.

5. *The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed*

**Can be made.** The sign itself has been constructed with local and natural resources in the same position as the existing sign. In addition, none of the surrounding greenery will be removed or disturbed resulting in a visually unobtrusive aesthetic. Due to the frame structure and location, moving the sign would not be feasible without damage to the existing grasses on the property. The sign will be visible from the roadway but does not obstruct any intersections or the rights-of-way. The sign will not be injurious to the surrounding neighborhood and does not pose any threat of injury to the public welfare.

6. *The granting of the variance is consistent with the general purpose and intent of these LDRs.*

**Can Be made.** The intent of non-residential sign standards is to “allow for the reasonable display of signage to identify and advertise products, services, and business establishments for the information and convenience of the general public.” The purpose of the Business Conservation sign standards is to serve the allowed uses in that zone. This variance request is consistent with the general intent of the sign standards as well as the intent of non-residential advertising. The sign will comply with all other sign and display standards including materials and lighting in Sec. 5.6.2.F. but will exceed height restrictions applied to that zoning regulation.

- IV. These conclusions are based upon the analysis of the findings as detailed in the June 6<sup>th</sup>, 2023, staff report, as well as the Board's analysis of the required findings for the Variance, that occurred at the June 6<sup>th</sup>, 2023, public hearing on the matter.

**IT IS HEREBY ORDERED:**

The Board **DENIES** the application for a Variance dated February 24<sup>th</sup>, 2023, VAR2023-0003, to vary Section 3.3.1.B.10 for the 13-foot-tall sign for a new restaurant business off Moose Wilson Road, not being able to make all six (6) findings of approval for a Variance pursuant to Section 8.8.2. of the Teton County Land Development Regulations.

DATED this \_\_\_\_ day of June 2023.

BOARD OF COUNTY COMMISSIONERS  
TETON COUNTY, WYOMING

BY: \_\_\_\_\_  
Luther Propst, Chairman

ATTEST: \_\_\_\_\_  
Maureen E. Murphy, County Clerk

### **CERTIFICATE OF SERVICE**

I, Maureen E. Murphy, Teton County Clerk, do hereby certify that I sent a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING APPROVAL OF VARIANCE, postage prepaid by U.S. Mail or other delivery as indicated below on this \_\_\_\_ day of June 2023, to the following addresses:

Robbie Morris  
PO Box 4931  
Jackson, WY 83001

Keith Gingery, Deputy County Attorney  
Teton County Attorney's Office  
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*Via Email Only or Hand Delivery Only*

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*Via Email or Hand Delivery Only*

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Maureen E. Murphy, County Clerk